

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

PJM Interconnection, L.L.C.
Allegheny Electric Cooperative, Inc.
Atlantic City Electric Company
Baltimore Gas & Electric Company
Delmarva Power & Light Company
Jersey Central Power & Light Company
Metropolitan Edison Company
PECO Energy Company
Pennsylvania Electric Company
PPL Electric Utilities Corporation
Potomac Electric Power Company
Public Service Electric & Gas Company
UGI Utilities Inc.

Docket Nos. RT01-2-001 and
RT01-2-002

ORDER GRANTING PJM RTO STATUS, GRANTING IN PART
AND DENYING IN PART REQUESTS FOR REHEARING,
ACCEPTING AND DIRECTING COMPLIANCE FILING,
AND DENYING MOTION FOR STAY,

(Issued December 19, 2002)

1. In this order, the Commission grants PJM Interconnection, L.L.C. (PJM) Regional Transmission Organization (RTO) status. The order grants rehearing of the July 12, 2001 order which found that PJM did not qualify for RTO status because of its insufficient independence and scope. It also rules on other requests for rehearing, denies a motion for stay of its order, and rules on PJM's filing in compliance with the July 12 order. The order requires PJM to make a further compliance filing of its complete RTO tariff within 90 days. This order is in the public interest because it will enable PJM to begin operation as a full RTO, thus providing a more efficient market for transmission and energy.

BACKGROUND

The Commission's July 12 order

2. In response to the directive of the Commission's Order No. 2000,¹ on October 11, 2000, PJM and the PJM transmission owners (TOs) made a compliance filing stating that under PJM's current structure as an independent system operator (ISO), it satisfied all of the necessary characteristics and could perform all of the necessary functions of a Regional Transmission Organization (RTO). PJM requested that the Commission find that it satisfies Order No. 2000 criteria and approve PJM as an RTO.

3. On July 12, 2001, the Commission issued an order provisionally granting RTO status to PJM, subject to certain changes.² We found that "PJM's RTO proposal, while not ideal with respect to scope and regional configuration, represents a good first step toward the creation of an RTO in the Northeast region."³

4. We found, however, that of the four required characteristics of an RTO, PJM did not fully meet the scope and independence characteristics. Moreover, of the eight functions that an RTO must be able to perform, we found that PJM needed to make further changes before it could perform the necessary RTO functions of tariff administration and design, planning transmission expansions, and interregional coordination.

5. We further found that "[t]he existence of three separate ISOs [independent system operators] in the Northeast with three sets of rules and structures has resulted in a balkanized market that does not encourage trade across the seams or increase efficiencies

¹Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000) , order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000 -A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

²PJM Interconnection, L.L.C, et al., 96 FERC ¶ 61,061 (2001) (July 12 Order).

³July 12 Order at 61,231.

over and above the tight power pool structure that predated the ISOs.⁴ Therefore, while we stated that PJM's RTO proposal would be a good platform on which to build, in a concurrent order we required the three Northeastern ISOs to negotiate to form a single Northeastern ISO.⁵

6. PJM sought clarification of our July 12 Order. In addition, requests for rehearing were filed by the PJM TOs, PPL Electric Utilities Corporation (PPL), the Williams Companies (Williams), Dynegy, Inc. (Dynegy), the Maryland Public Service Commission, District of Columbia Public Service Commission, and Virginia State Corporations Commission (Joint Commissions), the Delaware Public Service Commission (Delaware Commission), the Mid-Atlantic Power Supply Association (MAPSA) and FirstEnergy Corporation (FirstEnergy).

7. In addition, PJM made a compliance filing on September 10, 2001. Notice of the compliance filing was published in the Federal Register, 66 Fed. Reg. 48,867 (2001), with comments, protests and interventions due on or before October 1, 2001. Comments were filed by the PJM TOs, Dynegy, Williams, Delaware Municipal Electric Corporation (DEMEC), KeySpan-Ravenswood, Inc. (Ravenswood), and Electric Power Supply Association (EPSA). Motions to intervene were filed by Liberty Generating Company, L.L.C. and PG&E National Energy Group. The Members of the Transmission Owners Committee of the Energy Association of New York State (Member Systems) filed an answer to KeySpan's comments.

DISCUSSION

PROCEDURAL MATTERS

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the notices of intervention and timely unopposed motions to intervene serve to make the intervenors parties to the proceedings in which they sought to intervene. Under Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2001), an answer may not be made to a protest unless permitted by the decisional authority. We will reject the answer filed to KeySpan's comments by Member Systems, as providing no additional material on which to base our decision.

⁴July 12 Order at 61,230.

⁵Regional Transmission Organizations, 96 FERC ¶ 61,066 (2001) (Mediation Order).

ANALYSIS

I. PJM's RTO Status

9. In their request for rehearing, the Joint Commissions ask that, rather than requiring the three Northeastern ISOs to become one RTO, we permit PJM to continue to pursue RTO status on its own. We grant rehearing, and find that PJM's status as an RTO should no longer be "provisional," but full. Our concerns as to whether PJM has sufficient scope and independence to be an RTO, and whether it can perform all the necessary functions of an RTO, have been alleviated, as follows.

Scope and configuration

10. In its application, PJM stated that it had sufficient scope to be an RTO, due to its current size, its pending agreement to be joined by the Allegheny Power companies to form PJM West,⁶ and the process it was undertaking under a Memorandum of Understanding (MOU) with the New York Independent System Operator (NYISO) and ISO New England (ISO-NE) to address seams problems among the three Northeastern ISOs.

11. In the July 12 Order, we concluded that three Northeast ISOs were not sufficiently compatible to permit market participants to fully exploit efficient trading opportunities necessary to achieve a competitive bulk power market in the Northeast region.⁷ However, our concerns regarding seams problems as between PJM, New York and New England have been reduced as a result of further developments. We recently approved the filing of a new Standard Market Design (SMD) for ISO-NE, which will enable ISO-NE to use PJM's software and which tracks PJM's market rules; ISO-NE has stated that one of the purposes of this filing was to reduce seams problems for participants who trade in both New England and PJM and eventually to reduce seams problems with New York as well.⁸ While progress has been made, we believe that further coordination with New York continues to be necessary, and can be accomplished through the institution of interregional coordination procedures for ensuring a seamless market, as discussed below.

⁶See PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001).

⁷July 12 Order at 61,231.

⁸New England Power Pool, ISO New England, Inc., 100 FERC ¶ 61,287 at P 4 (2002) (New England SMD Order).

12. In addition, the industry has established, with Commission encouragement, a standards organization, the Wholesale Electric Quadrant of the North American Energy Standards Board (WEQ), to develop business practice standards and communication protocols that will apply across markets. The creation of uniform business standards will help reduce seams issues.⁹ Finally, the Commission's SMD rulemaking will facilitate addressing some of the seams problems that concerned us earlier by creating standardized market and operating rules across RTOs.

13. Further, PJM has significantly enlarged its scope. It has completed its merger with Allegheny Power, which has now formed PJM West. American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd), Dayton Power and Light Company (DP&L), Virginia Electric and Power Company (Dominion Virginia Power) have recently filed a joint application to expand PJM's borders. Additionally, in Alliance Companies, et al., the Commission directed PJM to revise its tariff to allow the membership of Independent Transmission Companies (ITCs) consistent with the MISO tariff provisions.¹⁰ To address concerns regarding reliability problems that could be caused by the new configuration of PJM at its western boundary with the addition of some of the Alliance Companies, the Commission has addressed this problem in Alliance Companies by conditionally accepting the decisions by those companies to join PJM, subject to approval of the companies' updated Reliability Plans by NERC (the North American Electric Reliability Council).¹¹

14. PJM coordinates a pooled generating capacity of more than 71,600 megawatts and operates a wholesale electricity market with more than 200 market buyers, sellers and traders of electricity.¹² The addition of Dominion Virginia Power, AEP, ComEd, and

⁹Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, FERC Stats. & Regs. ¶ 32,563 at P 116 (2002) (SMD NOPR).

¹⁰100 FERC ¶ 61,137 at P 45 (2002) (Alliance Companies).

¹¹The Commission also required MISO and PJM to file a joint operational agreement detailing how they would operate at the seams during this transitional period. Alliance Companies at PP 46-48.

¹²See http://www.pjm.com/about/news/news_articles/2002/20020508_pjm_aep_pursuing_membership_agreement.pdf

DP&L will enlarge PJM's scope and encourage increased trading across the seams and increase efficiencies. PJM has made significant efforts through a collaborative process that included various industry participants including state commissions to expand its boundaries to the west and south. Therefore, we find that PJM's current and potential expansion has alleviated our concerns regarding the possible insufficient scope of PJM as an RTO.

15. Based on these considerations, we find that PJM's scope and configuration is sufficient to grant it full RTO status.

Independence

16. An RTO is required to be independent of any market participant. In the July 12 Order, we found that "[i]n most respects, PJM's existing design complies with this characteristic,"¹³ noting that PJM's Board is independent of control by any market participant, and has independent authority to change PJM's tariffs and market rules. We found, however, that the PJM Board did not have sufficient independence with regard to reliability matters. Reliability responsibilities within PJM, which include setting region-wide capacity requirements and the charges for capacity deficiencies for the PJM control area, are addressed through the Reliability Assurance Agreement (RAA), an agreement among the load serving entities (LSEs) within PJM's control area. The RAA is administered by the Reliability Committee, which consisted of a voting representative from each LSE and a non-voting representative of PJM's Office of Interconnection. We found that allowing LSEs, who are market participants, to be responsible for setting reliability requirements and associated penalties was inconsistent with the independence characteristic, and that the PJM Board must have the exclusive authority to propose changes to reliability requirements under Section 205 of the Federal Power Act (FPA).¹⁴ We required PJM to make a compliance filing making these changes to the RAA. We

¹²(...continued)

¹³July 12 Order at 61,229.

¹⁴16 U.S.C. § 824d (1994).

also stated that PJM should review the membership on the Reliability Committee to study the feasibility of expanding membership to more market participants.¹⁵

17. On December 31, 2001, PJM filed, with the requisite concurrence of its stakeholders, in Docket No. ER02-657-000 to amend its RAA. These changes provide that the PJM Board, rather than the Reliability Committee, will make decisions regarding reliability issues, and that the Reliability Committee will have an advisory rather than a decision-making role. Now that these changes have become effective, we find them sufficient to satisfy the independence requirement for RTO status. Since we find that PJM's existing RAA is sufficient to satisfy the independence requirement, there is no need to address the rehearing requests of the July 12 order relating to independence, and these requests are dismissed.

Tariff administration and design

18. PJM's responsibilities regarding the administration and design of its Open Access Transmission Tariff (OATT) include approving requests by generators to interconnect with the systems of PJM's TOs. At the time of the July 12 Order, however, the TOs performed the feasibility and system impact studies required for interconnection, and only the TOs signed interconnection agreements with generators.¹⁶ The Commission was concerned that PJM's TOs were able to exercise excessive influence over this process, and so favor their own affiliated generation in interconnection decision-making. We therefore ruled in the July 12 Order that the entire process of generator interconnection must be under PJM's control, and that customers should sign interconnection agreements and interconnection study agreements with PJM rather than with individual transmission operators. PJM, in its September 10, 2001 compliance filing, addressed this requirement.

19. Both PJM's prior tariff provisions regarding interconnection, and the changes that PJM proposed in its compliance filing, have been superseded by PJM's subsequent refiling of its generator interconnection policy on March 18, 2002. We accepted that filing, recognizing that it might not ultimately be consistent with the Commission's ongoing rulemaking regarding generator interconnection,¹⁷ and therefore accepted PJM's

¹⁵Id. at 61,230.

¹⁶July 12 Order at 61,233 - 234.

¹⁷See *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.*, 99 FERC ¶ 61,189 at 61,773 (2002) (we noted that "PJM's proposal grants significant authority to the transmission owners in the interconnection process, which may ultimately not be

interconnection policy subject to the final rule in the Commission's ongoing rulemaking proceeding regarding generator interconnection.¹⁸ We will therefore dismiss the rehearing request of the PJM TOs and PJM's request for clarification on this issue, and the protests and comments addressing PJM's compliance filing. When the Commission issues its final rule in its interconnection proceeding, that rule will govern PJM's interconnection policy.

Planning and expansion

20. Schedule 6 of PJM's Operating Agreement (OA) described the regional planning process by which PJM identified and implemented transmission expansion projects and allocated the responsibility of construction and costs of construction to the appropriate TOs.¹⁹ We noted in the July 12 Order that "[t]he PJM ISO planning process appears to be driven more by the particular needs of TOs in serving their traditional retail customers than in fostering competitive markets."²⁰ We therefore found that, to meet the requirements of Order No. 2000, PJM would have to modify Schedule 6 of the OA to create a planning process that gave "full consideration to all market perspectives and identifies expansions that are critically needed to support competition as well as reliability needs" and included meaningful opportunities for participation by third parties,²¹ although PJM must ultimately be responsible for developing the regional transmission plan.

21. We further found that PJM's regional planning process appeared to limit the construction and ownership of new transmission facilities to TOs, although it did not expressly preclude merchant projects. We therefore ordered PJM to revise Schedule 6

¹⁷(...continued)

consistent with" the Commission's interconnection rule [and i]n addition, PJM has proposed terms and conditions for interconnection which may create seams issues with neighboring systems and also may not be compatible with whatever RTO may ultimately be approved for PJM").

¹⁸Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 99 FERC ¶ 61,086 (2002) (Interconnection NOPR).

¹⁹Id. at 61,239 - 240.

²⁰Id. at 61,240.

²¹Id.

specifically to include the possibility of third parties constructing and owning new transmission facilities identified by the plan.²²

22. To comply with this directive, PJM in its September 10 compliance filing added language to the OA stating that PJM shall be responsible for development of the regional expansion plan and for conducting studies on which the plan is based. PJM noted that because of the short time available to prepare the compliance filing, its proposed revisions do not include specific criteria for assessing whether a proposed expansion or enhancement of that transmission system is needed or desirable to support or enhance competition – *i.e.*, is an upgrade for economic rather than reliability purposes – but that PJM's Planning Committee would address this issue.

23. The PJM TOs in their protests to the September 10 filing contend that PJM has never agreed to accept interconnection cost obligations in connection with facilities that are selected by PJM for reasons other than reliability. DEMEC, on the other hand, asks the Commission to clarify that PJM's tariff should clearly provide that transmission owners are responsible for upgrades for either reliability or economic purposes, arguing that traditionally transmission owners construct such upgrades and recover the costs for them in rates. Similar issues were raised in requests for rehearing of the July 12 Order, in which the PJM TOs and PPL argue that the Commission improperly expanded the scope of regional transmission planning to include projects built for economic rather than reliability reasons without ensuring that the builders of those projects have the responsibility to recover the projects' costs.

24. We find that PJM's September 10 compliance filing does not meet our directive that the PJM planning process identify expansions that are needed to support competition as well as reliability needs. In its compliance filing, PJM states that additional time is needed for PJM's Planning Committee to develop specific criteria. In order to fully meet the planning and expansion function for an RTO, we will require PJM to make a further compliance filing within 90 days that more fully explains how PJM's planning process will identify expansions that are needed to support competition. PJM's regional transmission plan must provide authority for PJM to require upgrades both to ensure system reliability and to support competition. Thus, we anticipate that the plan will enable PJM to (a) require the necessary additions to its TOs' systems to ensure reliability, and (b) identify transmission constraints and require new construction to address those constraints. DEMEC, in its protest, recommends that, as PJM identifies appropriate economic upgrades, it should give priority to proposals for transmission expansion at current interconnections with utilities, in areas where transmission is constrained, and to

²²Id. at 61,241.

interconnection applications by generators locating in congested areas. We will require PJM either to adopt the priorities suggested by DEMEC, or, if it believes that other priorities are superior, to state what they are and why.

25. Several issues have been raised regarding the issue of third party (*i.e.*, merchant transmission) projects in the protests to the compliance filing. Dynegy and EPSA argue that PJM's cost reimbursement and other provisions do not allow for the possibility of a third party constructing and owning interconnection facilities.

26. In the compliance filing that PJM must make in 90 days, we will require PJM to make further revisions to Schedule 6 of the OA. In its September 10 compliance filing, PJM added to its OA a new provision (Section 1.5.6(c) of Schedule 6) which provides that "[t]he recommended [regional transmission] plan may include an enhancement or expansion requested by any participant . . . provided that the requestor accepts responsibility for ownership, construction and financing of the enhancement or expansion[.] In the transmittal letter to its compliance filing, PJM stated that this section is intended "to provide explicitly that proposed merchant transmission facilities may be included in PJM's regional expansion plans."²³ Within 90 days, we will require PJM to add language to Section 1.5.6(c) above that explicitly states that any party may propose a new project – whether a transmission owner, or a third party seeking to build a merchant transmission plant – and that the party proposing the project will be responsible for its costs of the project. In *PJM Interconnection, L.L.C. and Allegheny Power*, 98 FERC ¶ 61,072 (2002), the Commission accepted similar regional planning provisions to the PJM West Regional Transmission Expansion Protocol procedures, subject to the outcome of the instant filing and other related proceedings. Also within 90 days, we will require PJM to make a filing ensuring that the tariff provisions we are requiring here harmonize with the equivalent tariff provisions for PJM West.

Interregional coordination

27. An RTO is required to ensure the integration of reliability practices within an interconnection, and market interface practices among regions. PJM stated that the formation of PJM West will significantly address PJM's seams problems to the west, and that it is seeking to resolve interregional coordination issues within the MOU process in which it is engaging with ISO-NE and NYISO. It also states that its Planning Working Group is currently addressing interregional coordination issues.

²³Transmittal letter to September 10, 2001 compliance filing at 6.

28. Since the issuance of our July 12 Order, Allegheny Power has formed PJM West, and PJM has become the transmission provider on the Allegheny system offering service under the OATT. PJM directs the operation of PJM West transmission assets through PJM's central control center while the physical control of these assets will remain with the transmission owners.²⁴ Additionally, PJM has submitted a proposal to extend its operational area to the West and South, beginning to implement this expansion in February 2003.²⁵ Additionally, PJM and MISO are developing plans to meld their operations and markets under a single seamless market design.

29. Further, in Alliance Companies, the Commission directed MISO and PJM to develop and obtain NERC approval for reliability plans that would address NERC's reliability concerns. MISO and PJM informed NERC, in August 2002, that they intend to implement their expansions in phases and would seek approval of further revisions to their reliability plans. MISO and PJM proposed to change the boundaries of the MISO and PJM reliability coordination areas needed to accommodate the choices made by the former Alliance Companies. The NERC Operating Committee has approved the first phase of MISO and PJM's reliability plans to expand their reliability coordinator footprints to include their new members.²⁶ Additionally, MISO and PJM have an implementation plan to resolve critical seams issues.²⁷

30. PJM must do more work on eliminating seams with MISO as well as with neighboring regions to the North and the South. Although PJM has begun the process of seeking to eliminate seams problems, we find that more work needs to be done and this process needs to be expedited, given the importance to the market of resolving seams

²⁴PJM Interconnection, L.L.C. and Allegheny Power 96 FERC ¶ 61,060 at 61,212 (2001).

²⁵PJM's anticipated time line for integration is as follows: February 1, 2003, AEP and ComEd will turn over operational control of their transmission facilities to PJM; on May 1, 2003, AEP and DP&L will be integrated into the PJM market and DP&L will turn over operational control of their transmission facilities; on October 1, 2003, VEPCO will be integrated into the PJM market and turn over operational control of their transmission facilities; on December 1, 2003, ComEd will be integrated into the PJM market; and the dates for Duquesne and Illinois Power's integration are to be determined. See Docket Nos. ER03-262-000 and ER03-257-000.

²⁶On November 5, 2002, NERC filed its report in Docket No. EL02-65-000 et al.

²⁷MISO and PJM submitted an implementation progress report on November 18, 2002 in Docket No. EL02-65-000 et al.

issues so that energy can efficiently move to where it is most needed. We will require PJM to continue consultations and formulate a strategy to coordinate transmission practices and market interfaces, and to provide a report within 90 days of the date of this order setting forth its progress in addressing these seams problems. PJM has indicated that its Planning Working Group is currently addressing seams issues. It is our view that PJM might be better served by establishing a committee or working group specifically to address seams problems. In its 90-day compliance filing, PJM should either establish such a new committee or working group, or else state why it believes leaving these responsibilities with its Planning Working Group is a preferable alternative.

31. A seams-related issue has been raised regarding Capacity Benefit Margin (CBM). FirstEnergy argues on rehearing that the Commission erred in not addressing the question of how CBM will be calculated and applied to PJM West's interfaces with non-PJM members. The amount of CBM that PJM reserves for its own LSEs affects the amount of Available Transmission Capacity (ATC), which in turn affects the ability of generators outside PJM to obtain transmission capacity to serve LSEs in PJM. FirstEnergy states that PJM's excessive reservation of CBM has created a "fence" around the PJM control area, making PJM markets unavailable to external generators. FirstEnergy alleges that PJM has said that it will extend CBM to Allegheny Power's interface with FirstEnergy's control area, but has not provided details. FirstEnergy fears a possible conflict here between the rules of the different reliability regions in which PJM and companies to the west of it are located.

32. We will require PJM to address its practice regarding CBM, and its progress in harmonizing CBM rules among the different reliability regions, in its 90-day compliance filing.

II. Non-RTO Issues Raised on Rehearing

33. As to issues that are not related to the question of whether PJM may achieve full RTO status, we make the following rulings as to issues addressed in PJM's September 10 compliance filing and raised in the requests for rehearing of the July 12 Order.

34. TEP. In the July 12 Order, we rejected the proposed Transmission Enhancement Plan (TEP), an innovative rate proposal submitted by PJM's TOs. The TOs offered to upgrade the transmission grid and to share cost responsibility for those upgrades regardless of where they are located, in return for certain regulatory concessions, including a moratorium on changes to the zonal rates and deferral of cost recovery for investments made during that moratorium.

35. We rejected the TEP, on the basis that under Order No. 2000, an RTO must have exclusive authority to make the filings under Section 205 as to rates that are charged to the RTO's transmission customers. We noted in a recent case, we ordered RTO West to revise transmission owner agreements to eliminate the authority of "transmission owners who are not independent of market participants" to make unilateral filings with the Commission to establish or change rates under a region-wide RTO tariff. We found that, once a revenue requirement is approved by the Commission, it is the responsibility of the RTO, as sole administrator of the tariff for the region, to incorporate the revenue requirements of its members into a single tariff.²⁸

36. Similarly here, we found the proposed TEP was submitted by PJM on behalf of its TOs, which are market participants. Thus, based on RTO West, we could not accept TEP. We further found that the TEP provided no assurances that the incentives contained in the TEP would not favor the merchant function of a particular TO. Thus, only PJM could be responsible for developing this type of transmission enhancement plan.

37. The TOs and PPL seek rehearing of the Commission's rejection of the TEP. They state that Section 205 does not give RTOs the sole right to file for new rates, and does not give the Commission the authority to deprive a utility of its ability to seek new rates. The TOs claim that under this order, they have the obligation to build new reliability projects, but no ability to raise rates to pay for them (particularly since PJM, as a not-for-profit organization, similarly has no other way to recover these costs). They argue that the TEP satisfies Order 2000's requirement for independence, since it was filed by an independent Board. PPL further argues that the Commission has not explained how independence in ratemaking is necessary to achieve independent control of the tariff.

38. We will deny the rehearing requests. The resolution of the TEP issue is not necessary to the determination of PJM's RTO status and, therefore, need not be resolved in this proceeding. In fact, the issue of whether and when transmission owners can file for individual rates under section 205 is on remand to the Commission. In Atlantic City

²⁸Avista Corporation, 95 FERC ¶ 61,114 at 61,338 (2001) (RTO West), reh'g denied, 96 FERC ¶ 61,058 at 61,177 (2001), citing Order No. 2000 at 31,076 ("The transmission owners may make Section 205 filings to establish the payments that the RTO will make to the transmission owners for the use of the transmission facilities that are under the control of the RTO; the RTO, in turn, will make Section 205 filings to recover from transmission customers the cost of the payments it makes to transmission owners as well as its own costs and propose any other changes in the rates, terms and conditions of service to transmission customers"), reh'g denied, Order No. 2000-A at pp. 31,369-72.

Electric Company v. FERC,²⁹ the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's decision to prohibit the PJM transmission owners from unilaterally filing for rate design changes, subject only to the ISO's veto. Depending on the resolution of the Atlantic City remand, the PJM TOs may choose to reevaluate or refile the TEP. The Commission does recognize the need to encourage the construction of needed transportation infrastructure, as the TEP sought to do. In recent orders, we have allowed transmission owners in independent transmission companies (ITCs) within RTOs to develop innovative proposals for construction of needed transmission infrastructure, so long as the ITC is sufficiently independent to present no danger of discrimination among market participants.³⁰ The Commission encourages PJM and its transmission owners to craft a proposal to encourage infrastructure construction that ensures independence.³¹

39. ICAP requirement. MAPSA and FirstEnergy argue on rehearing that the Commission should have required PJM to address the fairness and reasonableness of its Installed Capacity (ICAP) requirement before ordering the parties into mediation to form a single Northeastern RTO, on the basis that until generation adequacy questions in all three ISOs are addressed, the Northeast cannot become a single well-functioning RTO.

²⁹295 F.3d 1, 11 (D.C. Cir. 2002) (Atlantic City).

³⁰See TRANSLink Transmission Company, 99 FERC ¶ 61,106 (2002) (Commission approved a provision allowing TRANSLink, an ITC, to maintain a separate schedule within the MISO tariff to facilitate different rates and a different rate design, as long as TRANSLink can justify differences and explain how regional uniformity is not harmed); and RTO West at 61,338-39 (Commission found that an ITC that was independent of market participants would not have an incentive to discriminate among market participants, and so should be allowed to include a request for innovative rate treatment in its Section 205 revenue requirement filing).

³¹The TOs further argue that they are obliged to build new reliability projects, but have no way to pay for them, is not correct. If PJM or any other RTO requires a TO to build a new project, the TO can make a Section 205 filing to recover its costs from the RTO – its sole customer – as provided by Order No. 2000 at 31,076 ("The transmission owners may make Section 205 filings to establish the payments that the RTO will make to the transmission owners for the use of the transmission facilities that are under the control of the RTO; the RTO, in turn, will make Section 205 filings to recover from transmission customers the cost of the payments it makes to transmission owners as well as its own costs and propose any other changes in the rates, terms and conditions of service to transmission customers"), reh'g denied, Order No. 2000-A at pp. 31,369-72.

40. We will deny the requests for rehearing as to PJM's ICAP regime. We noted in the July 12 Order that installed capacity requirement issues were outside of the scope of the RTO proceeding and determined that this issue did not relate to whether PJM's RTO proposal complied with Order No. 2000 and, therefore, would be better addressed in other proceedings.³² Further, since issuance of the July 12 Order, ISO-NE, NYISO, PJM, and the Independent Electricity Market Operator (IMO) of Ontario have entered into a memorandum of understanding³³ that includes principles to facilitate trading of ICAP between the control areas and addresses commitment, scheduling, call provisions, and curtailment provisions for ICAP transactions that cross control area boundaries.³⁴ Since PJM is already working with its counterparts in the Northeast to determine appropriate regional capacity requirements, we will not require it to address that issue here as well.

41. Mediation. The Joint Commissions filed a request for rehearing and motion for stay of the July 12 Order pending rehearing, arguing that PJM should not be required to go through mediation before attaining RTO status. Since we are granting the Joint Commissions' and the Delaware Commission's request for rehearing by granting full RTO status to PJM, we dismiss the Joint Commissions' motion for stay pending rehearing as now moot.

III. Non-RTO Issues in PJM's Compliance Filing

42. TTC/ATC calculation disputes. We required clarification from PJM as to how, in situations where PJM's calculation of TTC/ATC (Total Transmission Capacity/Available Transmission Capacity) diverged from its TOs' calculations, PJM will resolve that discrepancy. We also required PJM to make a compliance filing ensuring that reports by the RTO's market monitor would be submitted to the Commission at the same time that they were submitted to PJM. PJM has added language to its tariff clarifying that PJM is solely responsible for calculating ATC and TTC, and that any disputes regarding such determinations or the data on which they are based will be resolved pursuant to the dispute resolutions of PJM's tariff. We accept PJM's revised tariff sheets because PJM's proposed modifications comply with the Commission's directive.

43. Market monitoring reports. In its compliance filing, PJM has modified the language of its tariff to ensure that copies of all reports of the Market Monitoring Unit

³²July 12 Order at 61,233 n.24.

³³See www.isomou.com.

³⁴New England SMD Order at P 110.

will be provided to the Commission at the same time that they are provided to the PJM Board. We accept PJM's compliance filing as to this issue.

III. Requirement to File Revised RTO tariff

44. Since the July 12 order, PJM has made a number of filings which have revised various aspects of its tariff. A number of those filings have been discussed in this order, and PJM has also made other filings, for example, to revise its Emergency Load Response Program and to institute an Economic Load Response Program. Thus, the compliance tariff sheets filed by PJM do not reflect the actual RTO tariff under which PJM will operate. Accordingly, the Commission will require PJM to file its OATT, RAA and OA within 90 days of the date of this order to reflect the conditions under which it will operate the RTO.

The Commission orders:

(A) PJM is granted full, rather than provisional, RTO status, subject to the conditions of this order.

(B) The requests for rehearing of our July 12, 2001 order are granted in part and denied in part, as set forth above.

(C) PJM's compliance filing is accepted, with certain issues made subject to the conditions of this order.

(D) PJM must make a compliance filing within 90 days of the date of this order, as discussed above.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.